IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1977 OF 2005

Mahadev Dattatray Vasagadekar & Ors. ..Petitioners.
Vs.
Dalumal Longmal Lohana ..Respondent.

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Mr. G.S. Godbole for the Petitioners.
Mr. T.D. Deshmukh for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

21st June, 2006.

P.C. :

1. A decree for eviction has been passed by the Trial Court on the ground of default in the payment of rent and on the ground that the tenant had without the consent of the landlord in writing erected on the premises a permanent structure.

2. Learned counsel appearing for the parties have been heard both on the question of default as well as on the question of permanent construction. In my view, the decree for eviction is liable to be confirmed on the ground of the tenant having made an unauthorized permanent construction. Hence, it is not necessary to enquire into the correctness of the order of the Trial Judge

confirmed in appeal, on the issue of default.

3. In so far as the permanent construction is concerned, the landlord entered the witness box and adduced detailed evidence on the nature of the construction. The Municipal Council had issued a notice on 14th June, 1976 recording that one of the walls of the suit premises adjoining the road had collapsed; that part of the roof had given way and that the roof had become dilapidated. From the evidence on the record it has emerged that the tenant replaced the walls on the Southern, Eastern and Western sides of the building. Similarly, the entire roof came to be replaced and the height of the roof was increased. Admittedly, the permission of the landlord was not taken. No notice as required was given to the landlord under Section 23(2) of the Rent Act. The reconstruction was carried out without seeking the permission of the Municipal Council.

4. Both the Courts below held that the evidence of the Plaintiff is corroborated by the reports of the Court Commissioner appointed under Order 26 Rule 9 of the Code of Civil Procedure. A perusal of the cross examination of the tenant (pages 110 and 111

of the additional compilation) shows that inspection by the Commissioner was carried out in the presence of the tenant. No objection was raised to the reports of the Commissioner and those reports were accordingly exhibited in evidence. That apart, the evidence of the Plaintiff - landlord is sufficient to establish the case that there was an unauthorized permanent construction in the premises.

5. The decree for eviction on the ground that a permanent construction was unauthorizedly carried out by the tenant without the consent of the landlord does not warrant interference under Article 227. The Petition is accordingly dismissed.

6. However, having regard to the circumstances of the case, in order to enable the tenant to seek recourse to the remedies in appeal, the decree shall not be executed for a period of eight weeks from today.